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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,380

07/02/2003

Peter Willimowski

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EXAMINER

CHU, HELEN OK

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

02/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/612,380	Applicant(s) WILLIMOWSKI ET AL.	
	Examiner HELEN O. CHU	Art Unit 1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1 and 5-10.
 Claim(s) withdrawn from consideration: 2-4 and 34.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The arguments are not persuasive and the prior art of record has not been overcome..
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☒ Other: See Continuation Sheet.

/Raymond Alejandro/
 Primary Examiner, Art Unit 1795

Continuation of 13. Other: The claims are rejected based on the Final Office Action dated 10/2/2007. The arguments are not persuasive.

Regarding the arguments for Election by Original Presentation. Please note MPEP 811 states "it may be made at any time before final action" and also MPEP 811.02 states "Since 37 CFR 1.142(a) provides that restriction is proper at any stage of prosecution up to final action, a second requirement may be made when it becomes proper, even though there was a prior requirement with which applicant complied. Ex parte Benke, 1904 C.D. 63, 108 O.G. 1588 (Comm'r Pat. 1904).

The claims as originally filed required claim 2 to be a dependent claim of 1. The amendment submitted by the Applicants on 10/6/2006 amended claim 2 to be independent and recited a "fourth flow path." The fourth flow path was interpreted by the Examiner in Fig. 1 the position in which the fuel first enters the system but before it splits into the first and second (Fig. 1-44, 46) flow paths. The amendment dated 7/13/2007 amended claim 2 to recite "fourth flow path operable to supply a third anode reactant feed stream to said third flow path without said third anode reactant feed stream flowing through an anode section prior to reaching said third flow path" which corresponds to Figure 5, the original claims corresponds to Figure 1 which is a different embodiment and therefore the Examiner issued an Election by Original Presentation in response to the amendment dated 7/13/2007.

In regards to the arguments directed to the U.S.C 112, second paragraph, rejection. The Applicants never defined or clearly defined what an operational state in the specification is. The Applicants arguments state that operational states of some valves are open, closed or partially opened and some valves have operational states of being opened or closed. Again arguments presented by the Applicants' do not present any clarity to the matter. The Examiner is confused as to what kind of operational states are the valves as disclosed by the Applicants. As Applicants have stated that there are open and closed or opened, closed and partially opened but the claimed recitation states "an operational state" which indicates to the Examiner ONE operational state. Appropriate corrections are required.

Regarding arguments as directed to U.S.C. 102, these arguments are not persuasive, the Cheron reference discloses that if at t0 all of the valves of 14, 24, 34 are closed the anode reactant feed will go through the flow paths of 12, 22, 32 or the entire anode feed will go into flow paths 12, 22, 32 or denoted by "f". The anode flow path with 12 (Applicant's first flow path) is separate and distinct from anode flow path with 22 (Applicant's second flow path) etc. The third flow as indicated by the Applicants and the Examiner is the discharge flow path (Fig. 1-3) with a discharge valve (Fig. 1-9)